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1. PRISONERS SENTENCED FOR MISDEMEANORS TO WORKHOUSE OF MUNICIPALITY IN FOREIGN COUNTY NO WORKHOUSE IN COUNTY—EXPENSE OF TRANSPORTATION AND MAINTENANCE MAY NOT BE LEGALLY PAID FROM COUNTY FUNDS IN ABSENCE OF WRITTEN CONTRACT PROVIDING FOR SUCH PAYMENT.
2. IN ABSENCE OF WRITTEN CONTRACT FOR PAYMENTS OF TRANSPORTATION AND MAINTENANCE OF PRISONERS SENT TO MUNICIPAL WORKHOUSE FROM FOREIGN COUNTY, COUNTY AUDITOR WITHOUT LEGAL AUTHORITY TO ISSUE WARRANT TO PAY EXPENSES—COUNTY AUDITOR LIABLE TO FINDING FOR SUCH UNAUTHORIZED EXPENDITURES.

SYLLABUS:

1. Where prisoners sentenced for misdemeanors by a court of a county not having a workhouse are sent to a workhouse of a municipality in another county, the expense of transportation and maintenance of such prisoners may not be legally paid from county funds in the absence of a written contract providing for such payment.

2. In the absence of a written contract for the payments of transportation and maintenance of prisoners sent to a workhouse of a municipality from a county not having a workhouse, a county auditor is without legal authority to issue a warrant for payment of such expenses and the county auditor would be liable to a finding against him for such unauthorized expenditures.

Columbus, Ohio, August 4, 1949

Hon. Dorothy Kennedy, Prosecuting Attorney
Brown County, Georgetown, Ohio

Dear Madam:

Your request for my opinion reads as follows:

“I have received the following letter from the County Auditor of Brown County:

‘During the past few years, some persons sentenced for misdemeanors have been ordered confined to the Cincinnati Workhouse by sentence of the court. In going over the records, I find that there was a contract between the City of

Cincinnati and the Board of County Commissioners dated April 3, 1933. This contract expired, and has not been renewed.

'The custom has been, since the expiration of the contract, to send the prisoners to the Cincinnati Workhouse to serve their sentences on the word of the Prosecuting Attorney that the city of Cincinnati would be paid.

'After reading Section 4141, Ohio General Code, I have doubts whether the bills should be paid by Brown County in the absence of a contract.

'I would like to suggest that we receive an opinion on the matter from the Prosecuting Attorney as our legal adviser, and suggest that official obtain an opinion from the Attorney General since it is a matter of state wide importance. Very truly yours, (signed) Howard Frazee, Auditor, Brown County.'

"It would seem that this inquiry involves a construction of Sections 4141 and 13451-13, General Code. After going over the Auditor's request, it seems to me that under circumstances in the case, the following questions are submitted to you for an opinion :

1. In the absence of a written contract, is the County Auditor obligated to pay for the maintenance of prisoners sentenced to the Cincinnati workhouse?
2. In the absence of a contract, can the expenses of transporting prisoners to the Cincinnati workhouse be paid for with County funds?
3. In case payment would be made to the City of Cincinnati, would there be any personal liability on the part of the Auditor?"

Your questions relate to the provisions of Section 13451-13, General Code, which reads as follows :

"When a person has been convicted of a misdemeanor, including a violation of a municipal ordinance, by a court or magistrate in any county or municipality having no workhouse, and the commissioners of such county or council of such municipality have made provisions as allowed by law for receiving prisoners so convicted into the workhouse of a city in any other county or district in the state, such court or magistrate where imprisonment in jail may lawfully be imposed in such case, may sentence such person to such workhouse for a period within the terms of the law. In such case the court or magistrate may further order that such person stand committed to such workhouse until the

costs of prosecution are paid or he is discharged as herein provided.”

Section 13451-13, supra, enables a court or magistrate in any county or municipality having no workhouse to sentence a person convicted of a misdemeanor, including a violation of a municipal ordinance, to the workhouse of a city in any other county or district in the state, where the commissioners of such county or council of such municipality have made provisions according to law for receiving such persons so convicted. Such persons may be sentenced to such workhouse for a period within the terms of the law.

Section 4141 of the General Code is also involved in your question, which section reads as follows:

“Any city or district having a workhouse, may receive as inmates thereof persons sentenced or committed thereto, as provided by law, from counties other than the one in which such workhouse is situated, upon such terms and during such length of time as agreed upon by the commissioners of such counties, or by the council of such municipality, and the council of the city, or the board of the district workhouse, or other authority having the management and control of such workhouse. Convicts so received shall in all respects be and remain under the control of such director or board of workhouse directors, and subject to the rules, regulations and discipline of such workhouse, the same as other convicts therein detained.”

Section 4141, supra, by its provisions, provides that any municipality, city or district having a workhouse may receive as inmates persons sentenced thereto from a county other than the one in which the workhouse is located, upon such terms and during such length of time as agreed upon by the commissioners of such county or by the council of such municipality. It may be seen that this section of the General Code provides for the commitment to a workhouse of another county persons sentenced thereto from such other county after a valid contract has been entered into by the officers of the respective counties.

In Opinion No. 1334, Opinions of the Attorney General for 1918, Vol. I, page 946, it is stated:

“* * * I do not believe that where a county has no workhouse and is not joined with other counties in the maintenance of a joint workhouse it can send its prisoners into the workhouse of any other county except by agreement as provided for in

section 12384. When this agreement has been entered into, the expenses of commitment in that workhouse are made payable under the authority of that section and the confinement of a prisoner in the workhouse of the other county is made lawful by virtue of the provisions of section 12386, above quoted. Under no other circumstances, in such case, would the imprisonment be lawful or the payment of expenses incurred legal."

Sections 13451-13 and 13451-14, General Code, are the new enactments of Sections 12386 and 12384, General Code, and now are contained in the Criminal Procedure Code.

The purpose for which the prohibitory sections were passed may be explained by comparing the case of Buchanan Bridge Co. v. Campbell, et al., 60 O. S. 406. In the opinion of said case the court, in discussing the disregarding of statutes by county commissioners, said at page 419:

"This case has been ably argued both orally and on briefs, and many cases cited to the effect, on part of plaintiff in error, that a recovery may be had against a city or county as upon an implied contract, independent of any statute, for value received and retained by such city or county; and on part of the defendant in error, to the effect that, when the transaction is in violation or disregard of a statute in a material matter that no recovery can be had. We have no disposition to review or attempt to reconcile these cases. We regard them as having been correctly decided under the statutes and rules of decision in the particular locality, and under the peculiar circumstances of the respective cases."

The court in this opinion further said at page 425:

"The statutes are notice to the world as to the extent of the powers of the commissioners, * * *."

In 11 O. Jur. 508, paragraph 236, it is stated:

"The authority of the county commissioners to bind the public by contract is by no means unlimited. On the contrary, it is measured by statutory enactment, and their contracts are void unless they come within and conform to the statute.

"One who deals with county commissioners is charged with notice of the statutory limitations upon their powers, and of the statutory requirements as to the mode of making contracts, and if the attempted contract transcends those limitations, or omits or violates essential requirements, he can neither enforce the contract, nor recover on a quantum meruit, nor claim any estoppel against the county."

From the facts presented by you it is evident that the courts will not aid either party where provisions of the Code have been disregarded, but will leave them where they have placed themselves and refuse to grant relief to either party.

In consideration of the question of the liability of the county auditor in making these payments, without authority of law, I quote from 11 O. Jur. 388, paragraph 134:

“The duty of the county auditor as to the issuance of the required warrant for an amount fixed by law, or allowed by the proper officer or board, when a proper order or voucher is presented therefor, is subservient and ministerial in its character, and the courts will compel him to perform it. * * *

“This does not mean that the auditor is not called upon to exercise good faith and a reasonable degree of prudence and judgment in determining whether or not it is his legal duty to issue his warrant in any given case. He may properly refuse to issue his warrant if it appears that by mistake or fraud an amount has been allowed in excess of the sum lawfully due, or if the order was wholly unauthorized, or was based on an illegal contract, or if the officer making it acted without authority, or exceeded the legal bounds of his discretion.”

It is the clear intendment, under the law, that all financial transactions of the nature herein involved shall be controlled and limited under legislative enactments and the county auditor may only act as so empowered by such enactments and expressed statutory authority.

No claims or demands against the county can lawfully be paid unless they are submitted to the county commissioners (Section 2460, General Code). In *Jones, Auditor v. Commissioners of Lucas County*, 57 O. S. 189, it was held that in allowing a claim, it becomes the duty of the county commissioners to be sure that the claim is based upon some statute or rises out of the performance of some authorized contract and is not a mere demand unsupported by law.

Under Section 2570, General Code, the county auditor is prohibited from issuing his warrant for the payment of any claim unless the amount due is fixed by law and is allowed by a tribunal or officer authorized by law so to do.

In 11 O. Jur. page 364, Counties, Section 114, the duties and powers of the county auditor are discussed. We quote the following:

“* * * Even in the performance of his clearly ministerial duties he is required to exercise his intelligence. He is not a mere automaton, and does not act as a mere machine without consciousness, duty, or responsibility. On the contrary, it is his duty to use his judgment concerning the official acts which he is called upon to perform, to a degree commensurate with the responsibility, and to act in good faith and with the prudence and integrity which an honest man of ordinary prudence would exercise under like circumstances.”

It, therefore, appears that if the county auditor finds he is without legal justification for issuing his warrant for the payment of expenses of the character herein discussed, he should refuse to do so.

In view of the foregoing and in specific answer to your questions, it is my opinion that in the absence of a written contract providing for the payments for the transportation and maintenance of prisoners sentenced to the Cincinnati workhouse may not be legally made by the county auditor from county funds. In the event such payments were made by the county auditor in the absence of a written contract providing for same, such payments would be without authority of law and an unauthorized expenditure of public funds and the county auditor would be liable to a finding against him for such unauthorized expenditures.

Respectfully,

HERBERT S. DUFFY,
Attorney General.